

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1864 of 1980

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KAPASI MANSUKHLAL FULCHAND

Versus

KOLI RAVJI SADUL

Appearance:

MR BM MANGUKIYA for Petitioner
Respondent served

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 13/04/99

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act at the instance of the original plaintiff-land lord.
2. The plaintiff had filed a suit against the defendant for recovery of arrears of rent, and also for a decree of eviction on the ground that the defendant tenant was in arrears of rent of more than six months on

the date of the statutory notice, and has thereafter neglected or omitted to pay up the arrears within one month of the suit notice.

3. The trial court, after appreciating the evidence on record, came to the conclusion on facts that although the defendant tenant was in arrears of the specified amount of rent, and consequently passed a money decree in terms of the arrears, it dismissed the suit so far as the prayer for eviction was concerned on a finding of fact that the rent was not payable by the month, and that it was payable by the year and further that the decree for eviction cannot be passed in view of the fact that such an annual tenancy had not been terminated by an appropriate notice under section 106 of the Transfer of Property Act.

4. The plaintiff landlord being aggrieved by the trial court's decision, preferred an appeal under section 29(1) of the Rent Act which appeal was also dismissed. Hence the present revision.

5. The short point involved in the present revision is and was the short point argued before the lower appellate court. This point is, as to whether the rent was payable by the month or whether the rent was payable annually.

6. Both the trial court as also the lower appellate court have recorded concurrent findings of fact based on a reasonable interpretation of the documentary as well as oral evidence to the effect that the rent was not payable by the month, but was in fact payable annually.

7. Merely with a view to satisfy the conscience of the court, I have examined the pleadings of the parties and the relevant evidence arising therefrom. The defendant tenant had specifically pleaded in the written statement that the rent was not payable by the month and that it was payable annually. Both the courts have found on questions of fact that there was no written tenancy between the parties. In fact the tenancy had been created by the father of the plaintiff in favour of the grand-father of the defendant, and this had happened 40 or 50 years prior to the suit. Thus, the only manner of determining whether the rent was payable by the month or by the year would be by examining the documentary evidence proved on the record of the case. The defendant has produced two diaries at Exhs.31 and 28 in which the original landlord i.e. the father of the plaintiff had recorded the rents received by him as a landlord. This

diary is of the ownership of the predecessor-in-interest of the defendant tenant, and it comes from proper custody and has been proved in accordance with rules of evidence. No doubt the diary indicates that rent was paid not only annually, but on occasions also quarterly. However, the explanation for quarterly payments is equally plausible to the effect that although the rent was payable annually, quarterly payments were in fact being made in advance only on certain occasions when the defendant was in a position to pay the same. What is material is, however, that the diary does not disclose payments being made from month to month as contended by the plaintiff.

8. Another aspect arising from the plaintiff's plea taken in the suit plaint in the context of rent being payable from month to month, is that if the rent was really payable by the month, there was no reason for the plaintiff's father to continue the practice of recovering rent over 20 to 40 years, on an annual or quarterly basis without any protest whatsoever. In other words, even after the Bombay Rent Act was enacted in the year 1947, neither the original landlord viz. the plaintiff's father nor the plaintiff at any point of time till the date of the filing of the suit, had required the defendant tenant to pay rent by the month.

9. The courts below were, therefore, on a total appreciation of the evidence on record, amply justified in recording the finding of fact to the effect that the rent was not payable by the month, but was payable by the year. Obviously, therefore, the case would not be covered or governed by section 12(3)(a) of the said Act.

10. So far as the application of section 12(3)(b) is concerned, the lower appellate court has rightly reaffirmed the findings of fact recorded by the trial court and has also recorded findings of fact as to the payment of rent during the pendency of the appeal. The lower appellate court has found, firstly that all arrears as claimed in the suit notice had been deposited in the trial court on the date when the suit was first taken up for hearing i.e. on the date when the issues were framed. Thereafter the tenant has continued to deposit the rent in court during the course of trial as also during the course of appeal, and that the amount of the rent deposited in court was always in excess of the rent due upto the date of the deposit i.e. there were no arrears on any given date when the deposit was made and that furthermore, there were no arrears of rent due on the date of the appellate decree. Thus, the lower appellate court has for good and valid reasons based on

the evidentiary material on record, arrived at a finding of fact that the tenant is entitled to the protection of section 12(3)(b) of the Act and consequently no decree for eviction can be passed.

11. As aforesaid, both the courts below have recorded concurrent findings of fact, which even after a fresh appreciation of the evidence on record in the present revision, do not justify any interference.

12. There is, therefore, no substance in the present revision and the same is accordingly dismissed with no order as to costs.
